

### **REMARKS**

The Office Action has been reviewed and the Examiner's comments carefully considered. Claims 25-49 are pending in this application, with claims 25, 45, and 48 being in independent form. Claims 25 and 28 have been amended. Support for the amendments can be found in Figs. 8, 9 and 15, and at page 8, lines 10-13 of the specification. Claims 25-49 will remain pending upon entry of this Amendment. No new matter has been added.

### **Election/Restriction**

During a telephone conversation with the Examiner, Applicants' representative elected without traverse the invention of Species I and sub-species A (Fig. 11), as defined by claims 25-34, 36-42, and 49. Applicants hereby acknowledge the election of claims 25-34, 36-42, and 49 for further prosecution. Claims 35 and 43-48 are withdrawn from further consideration as being drawn to a non-elected invention. Applicants expressly reserve the right to file a divisional application directed to the non-elected invention during the pendency of the present application.

### **Specification Objections**

The Abstract of the Disclosure is objected to because, according to the Office Action, there appears to be a typographical error at line 8 of the Abstract. Applicants believe that no correction to the Abstract is necessary because a replacement Abstract filed with a Preliminary Amendment on June 2, 2006 replaces the original Abstract and remedies the typographical error. Reconsideration and withdrawal of this objection is respectfully requested.

### **Rejections Under 35 U.S.C. § 102**

Claims 25-32, 34, 36-41, and 49 stand rejected under 35 U.S.C. § 102(b) as being anticipated by British Patent No. GB 2079183 to Yoshizane et al. (hereinafter Yoshizane). Claims 25 and 42 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,865,230 to Tugwood. Claims 25 and 34 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,513,889 to Beard. In view of the above amendments and the following remarks, reconsideration and withdrawal of these rejections are respectfully requested.

Independent claim 25 has been amended to further recite that the operating element is only accessible from outside in the second state of the distal part of the flexible tube (emphasis added). Applicants respectfully submit that none of the cited references teach or suggest this feature.

With regard to the rejection of claims 25, 32, 34, 36-41, and 40 over Yoshizane, Applicants submit that in every embodiment of the Yoshizane invention, the operating element (namely, spray button 2) is accessible by the user regardless of the orientation of the flexible tube (namely, nozzle 3). As clearly shown in each of Figs. 1-47, spray button 2 is accessible whether nozzle 3 is in a first state (i.e., distal part of nozzle 3 is encased by cap 5) or in a second state (i.e., distal part of nozzle 3 is moved at least partly outside cap 5). This is contrary to the teachings of independent claim 25, which requires that the operating element is accessible from outside only when the distal part of the flexible tube is moved outside the enclosing means. This limitation is clearly evident in Figs. 8 and 9, which clearly illustrate that the operating element is inaccessible when the distal end of the flexible tube is enclosed by the enclosing means.

Additionally, Yoshizane fails to teach or suggest an embodiment where nozzle 3 is completely enclosed by cap 5. While Figs. 18-21 illustrate an embodiment where nozzle 3 is within the volume of cap 5, nozzle 3 is nonetheless accessible to the user through an aperture. Therefore, a complete enclosure of nozzle 3 is not achieved, which leads to a possibility of soiling the nozzle 3 tip such that it is undesirable for human or animal contact. Contrary to Yoshizane's disclosure, claim 26 of the present application defines a chamber within the container which is inaccessible when the flexible tube is in a first state, thereby ensuring hygienic conditions. Accordingly, Yoshizane fails to teach or suggest each and every element of independent claim 25, as amended.

Similarly, Tugwood fails to teach or suggest that the operating element is only accessible from outside in the second state of the distal part of the flexible tube (emphasis added). Tugwood's operating means (namely, push-button 3) is accessible regardless of the position the flexible tube (namely, applicator tube 2). This is contrary to the teachings of the amended independent claim 25, which requires that the operating element is accessible from

outside, only when the distal part of the flexible tube is moved outside the enclosing means. Therefore, Tugwood fails to teach or suggest each and every element of amended claim 25.

With regard to the rejection of claims 25 and 34 over Beard, this reference also fails to teach or suggest that the operating element is only accessible from outside in the second state of the distal part of the flexible tube (emphasis added). Amended claim 25 recites that the claimed valve is opened by actuation of an operating element which is only accessible from outside when the distal end of the flexible tube is moved to a position that is at least partly outside the enclosing means. Beard fails to teach an operating element because its nozzle 44 (which is interpreted as the claimed flexible tube) presumably also functions as the operating element. Moreover, even if the connecting structure attached to nozzle 44 is interpreted as an operating element, such structure is inaccessible regardless of whether nozzle 44 is covered by seal 36. Additionally, Beard's nozzle 44 is not movable at least partly outside seal 36. Rather, nozzle 44 remains stationary while seal 36 is removable from container 20.

Accordingly, Applicants respectfully submit that, for at least the foregoing reasons, amended independent claim 25 is not anticipated by or made obvious over the Yoshizane, Tugwood, or Beard references, whether considered individually or in combination. Because claims 26-32, 34, 36-42, and 49 depend on and include all of the limitations of amended independent claim 25, then the dependent claims are believed to be patentable for at least the reasons discussed above in connection with independent claim 25. Reconsideration and withdrawal of the rejections of the above claims are respectfully requested.

### **Rejections Under 35 U.S.C. § 103**

Claim 33 stands rejected under 35 U.S.C. § 103(a) for obviousness over Yoshizane, Tugwood, and Beard. In view of the above amendments and the following remarks, reconsideration and withdrawal of these rejections are respectfully requested.

Claim 33 indirectly depends on and includes all limitations of amended independent claim 25. As discussed above, none of Yoshizane, Tugwood, or Beard teaches or suggests each and every limitation of independent claim 25, as amended. Furthermore, these references cannot be combined in any obvious manner to teach or suggest that the operating element is only accessible from outside in the second state of the distal part of the flexible tube

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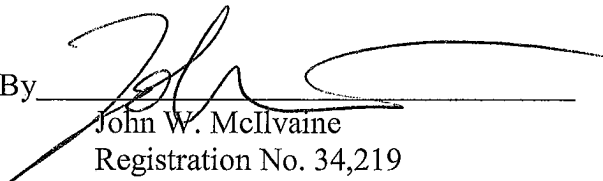
(emphasis added). Because dependent claim 33 indirectly depends from and adds further limitations to independent claim 25, claim 33 is believed to be allowable for at least the reasons discussed hereinabove in connection with independent claim 25, as amended. Reconsideration of the rejection of claim 33 is respectfully requested.

### **CONCLUSION**

In view of the above amendments and remarks, reconsideration of the rejections and allowance of claims 25-34, 36-42, and 49 are respectfully requested.

Respectfully submitted,  
THE WEBB LAW FIRM

By

A handwritten signature in black ink, appearing to read 'John W. McIlvaine', is written over a horizontal line.

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